IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

S.B.CRIMINAL MISC. PETITION NO. 304/2005
(Smt. Sayari Vs. State of Rajasthan & Anr.)

Date of Order : 14/09/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Manoj Rathore for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. M.C.Bishnoi for the non-petitioner No.2.

**BY THE COURT**:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 19.2.2005 passed by Additional Sessions Judge (Fast Track) No.1, Bhilwara (for short 'the revisional court' hereinafter), whereby the revisional court dismissed the revision petition filed by the petitioner against the order dated 2.9.2004 passed by Additional Chief Judicial Magistrate, Gangapur, district Bhilwara (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offences under Sections 323 and 504 IPC against the petitioner.

I have heard learned counsel for the petitioner, public prosecutor and counsel appearing for the non-petitioner No.2.

It is contended by learned counsel for the petitioner that the order taking cognizance is barred by period of limitation as envisaged under Section 468 Cr.P.C.

In the instant case, a complaint was filed by the non-petitioner No.2 before the trial court. By order dated 20.7.2000, the complaint was sent to police for investigation under Section 156(3) Cr.P.C.. The matter was investigated by the police and a final report was filed before the trial court. It appears that the matter remained pending for quite long time with the police and thereafter with the Court; however, by the order impugned the trial court took the cognizance of the offence against the petitioners.

The controversy came to be considered by Hon'ble Supreme Court in Bharat Damodar Kale Vs. State of A.P., wherein Hon'ble Apex Court considering the provisions of Chapter XXXVI Cr.P.C. held as under :-

> " A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the

> period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.
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> Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of the court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

Thus, in Bharat Damodar Kale (supra), the Hon'ble Supreme Court concluded that the limitation prescribed is only for the filing of the complaint or initiation of the

prosecution and not for taking cognizance. Keeping in view the decision of Hon'ble Supreme Court in Bharat Damodar Kale (supra), in my view it cannot be said that the order impugned taking cognizance is barred by period of limitation. Both the courts below have concurrently found that there is prima-facie ground to proceed against the petitioner for the offences under Section 323 and 504 IPC. In this view of the matter, In my view, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court.

The petition has no force and it is therefore, dismissed.

**(H.R.PANWAR),J.**

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